IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELVTH OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 18271 of 2003

Between:

S. Nanu Ram s/o Sri Peeru,
SNPC, Department, Singareni Collieries, Bellampally,
Adilabad District

..... PETITIONER

AND

1 The Management of Singareni Collieries Ltd., rep,. by its Managing Director, Lakdi-ka-pool, Hyderabad
2 The Deputy Chief Manager, (Personnel), Singareni Collieries Ltd., Bellampally, Adilabad Disrict.
3 The Chief Security Officer(SNPC) Singareni Collieries Limited, Bellampally Region, Bellampally, Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus the action of the respondents in issuing the proceedings No. BPA/SPC/2/2002/327 dated 3/5/10/2002 intimating the petitioner that he will be retiring from service of the respondent company with effect from 31-1-2004 is illegal and arbitrary in nature and consequently direct the respondents to rectify the error by incorporating the correct date of birth of the petitioner as 3-2-1946, basing upon the School Transfer Certificate, otherwise, the petitioner will sustain irreparable loss and injury.

Counsel for the Petitioner: Ms.G.SUDHA

Counsel for the Respondents: MR.K.SRINIVASA MURTHY

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 18271 of 2003

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O R D E R:

Challenging the proceedings No.BPA/SPC/2/2002/327 dated 3/5.10.2002 intimating the petitioner that he will be retiring from service of the respondent company w.e.f. 31.1.2004 as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of this case are as follows:

It is the case of the petitioner that he was appointed as casual labour in the respondent company on 28.1.1964 and thereafter he was posted as watchman in the respondent company at Bellampally. His date of birth is recorded in the school records as 3.2.1946. In his service records the same had to be incorporated but the management never took any corrective steps to change the same. He studied in Saraswathi Hindi Vidyalaya, Bellampally in the year 1959 and the said institution issued transfer certificate mentioning his date of birth as 3.2.1946 and that certificate was in the custody of his parents. After their death when he was tracing out old papers in the house, he could locate the same and immediately he made representation to the management to incorporate his date of birth as 3.2.1946. He made several representations from 1996 onwards, but the management without considering the same have chosen to issue a letter on 14.7.1997 stating that as per the existing circulars, study certificate produced for change of date of birth is not

valid and issued a letter No.BPA/SPC/2/2002/327 dated 3/5.10.2002 intimating him that he will be retiring from service w.e.f. 31.1.2004. Hence the present writ petition.

The respondents filed counter admitting that the petitioner was appointed in the respondent company on 28.1.1964. It is further stated that at the time of joining the respondent company the petitioner did not produce any evidence in support of his date of birth. Hence the medical officer who examined the petitioner acknowledged the date of birth as can be seen from his thumb impressions from the service record which date of birth has become final and the petitioner never challenged his age at any point of time. Since as per the company's records the petitioner was 20 years as on 28.1.1964, he will be 60 years as on 31.1.2004 and has to retire on 31.1.2004. As per the rules of the respondent company, in case of illiterates the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other evidences produced by the appointee. The date of birth as determined shall be treated as correct date of birth and will not be altered under any circumstances. The rules also contain the procedure for reviewing the date of birth in case there is any glaring disparity in the age recorded in various records. However, where there is no variation in the records, such cases will not be reopened. The petitioner kept quite since 1964 and at the fag end of his retirement he is questioning his superannuation. The petitioner produced a certificate stated to be issued by Saraswathi Hindi Vidyalaya, Bellampalli, on receipt of the superannuation notice stating that his date of birth is 3.2.1946. If he has really studied up to 8th class, he should have produced the said certificate at the time of his appointment itself, which he has not done. Hence the writ petition is liable to be dismissed.

The petitioner filed additional affidavit stating that in all coal mines the age of the workmen was not recorded and there are no set procedural rules from 1958 to 1986. A circular dated 1.8.1988 was issued for age determination by the respondent company

revising all the previous procedures and the same was implemented but in his case the settlement was not implemented. In the year 1996 for the first time he came to know that the concerned writer has not written his date of birth basing on the transfer certificate and hence he made representation on 8.12.1996 and for the inaction on the part of the respondents he cannot be punished. As on the date of joining itself i.e. 1064 he has submitted the Transfer Certificate issued by his school wherein his date of birth was mentioned. The writer maintains the said service book and if he has not incorporated it is not his fault.

Learned counsel for the petitioner contended that the date of birth of the petitioner is 3.2.1946 as per the school records but the management never took any corrective steps to change the same; that no procedure is followed in the year 1964 at the time of entry for production of proof of date of birth and refusal to incorporate the correct date of birth is illegal and it is only a matter of rectifying the clerical mistake or omission done by the management and hence he prays to allow the writ petition.

On the other hand, learned standing counsel for the respondents contended that the date of birth as determined shall be treated as correct date of birth and will not be altered under any circumstances. The petitioner's age was recorded as 20 years as on 28.1.1964 in all company records and therefore he has to retire from the company's service on attaining the age of superannuation w.e.f. 31.1.2004. The petitioner never challenged or raised any dispute regarding the age during his service and not represented before the management till the receipt of his superannuation notice and therefore there are no grounds to interfere with the same.

The petitioner being an employee of the Singareni Collieries after entry into service acquires the right to continue in service till the age of retirement as fixed by the respondents. It is not in dispute that the age of retirement in the respondent-Corporation is 60 years. Therefore the date of birth entered in the service records of the petitioner is of utmost important for the reason that the right to

continue in service stands decided by its entry in the service record. If the petitioner declared his age or date of birth at the initial stage of employment, he is not precluded from making a request on a subsequent date provided the rules permit the management to correct the date of birth. Even in the absence of any rule for correction of date of birth, the application of an employee for correction of date of birth beyond that time can also be entertained by the management provided he has good evidence to establish that the recorded date of birth is clearly erroneous but at the same time the employee must do so without any unreasonable delay. The case of the petitioner is that he studied in Saraswathi Hindi Vidyalaya, Bellampalli in the year 1959 and at that time he was issued a Transfer Certificate by the said school wherein it was clearly mentioned that his date of birth is 3.2.1946. According to him, that certificate was in the custody of his parents. After their death while he was tracing out the old papers in the house, he could locate the same and so he made a representation to incorporate his date of birth as 3.2.1946. The details as to when his parents died, when he traced out the Transfer Certificate issued by the school authorities and when he is having knowledge about the said certificate have not been stated in the affidavit specifically. According to the petitioner, he made a representation to the management. At what point of time he gave the representation is not stated. But, as per the proceedings of the respondents dated 14.7.1997 it seems he has produced a study certificate for change of date of birth but the same was rejected on the ground that the said certificate was not valid. He made a representation to the respondents dated 25.11.1997. From this document it is clear that he knows that his date of birth was entered in the service records as 3.2.1944 instead of 3.2.1946. He kept quite all these years and filed the writ petition in the year 2003 when the notice dated 3/5.10.2002 was issued by the respondents stating that he will be attaining the age of superannuation of 60 years as on 31.1.2004 and therefore he has to be retired from service of the company w.e.f. 31.1.2004. Basing on the said notice, the present writ petition is filed.

Six or seven years prior to issuance of the impugned proceedings the petitioner is having knowledge that his date of birth has not been correctly entered in the service register. He has not raised even little finger to get corrected the date of birth. Even when the respondent-management refused to accept the study certificate showing the date of birth as not a valid one, he did not challenge the same. Therefore the writ petition is liable to be dismissed on the ground of laches and delay and that the petitioner has not come to the Court with clean hands.

The respondents produced the original records relating to the service of the petitioner. Even in the declaration given by him as on 1.3.1997 his date of birth is shown as 28.1.1944. When he submitted the forms, his date of birth was shown as 28.1.1944 and in the original register of employees the petitioner's date of birth was noted as 20 years as on 28.1.1964. He also signed in that register. So, as per the service records of the petitioner it is clear that the petitioner was aged 20 years as on 28.1.1964. Therefore at the fag end of his career he cannot turn round and say by producing some certificate that his date of birth is liable to be altered or changed especially in view of the fact that he is having knowledge about the age or the date of birth so mentioned in the registers. So also he cannot turn round and say that it is a clerical or arithmetic mistake.

Learned counsel for the petitioner relied upon a decision in **Burn Standard Co. Ltd v. Dinabandhu Majumdar**, wherein it was held:

> "Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates

of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his “Service and Leave Record” could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality,

> towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement."

When the register is opened when he was first appointed on 28.1.1964, his date of birth was mentioned as 20 years as on 28.1.1964. Therefore, he is bound to retire w.e.f. 1.2.2004 as per the notice. The petitioner indulged in speculation in coming to this court and to a major extent he achieved the purpose of coming to the Court. It is clearly a speculative litigation.

Certain instructions have been issued by the respondents with regard to correction of date of birth. One such Cricular is dated 1.8.1988 wherein certain procedure is prescribed for determination of age. As per the Circular, in the case of appointees who passed matriculation or equivalent examination, the date of birth entered in such certificate shall be treated as a correct date of birth and the same will not be altered under any circumstances. In case there is any dispute with regard to the age and if he is an illiterate, he shall be referred to the Medical Board. The petitioner has not availed the procedure contemplated in the Circulars or any other rule and after receipt of superannuation notice he approached this court and obtained an interim order and by virtue of the said interim order he is continuing. Learned counsel for the petitioner placed strong reliance on a decision in **S.P. Bansal v. Chief General Manager**. It is well settled that in case any dispute arises regarding date of birth of any such person who is qualified, the date of birth mentioned in the high school certificate shall be accepted as the correct date of birth. There is no dispute about the proposition of law laid down but at the same time basing on the said school certificate it is the duty and the responsibility of the petitioner to get corrected the age or date of birth as mentioned in the Registers. It is now stated that on the date of joining itself in the year 1964 he has submitted a transfer certificate issued by his school authorities wherein his date of birth was

mentioned. The writer who maintains the said certificate book has not incorporated and that is not his fault. The additional affidavit allegations are quite contrary to the allegations in the affidavit in view of the fact that he traced out the transfer certificate after the death of his parents. It is not stated in the affidavit when his parents died. According to the allegations in the affidavit he made a representation to the management after he located the transfer certificate issued by Saraswathi Hindi Vidyalaya, Bellampally. He made a representation for the first time in the year 1996. So the allegation that he gave the transfer certificate at the time of joining the service of the respondent cannot be accepted. So, as seen from the representation dated 25.11.1997 he made several representations from 1996 onwards. Therefore it is not a case of correction of any arithmetical error or mistake.

The writ petition is totally devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: 12--07—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director, Management of Singareni Collieries Ltd., Lakdi-ka-pool, Hyderabad
2 The Deputy Chief Manager, (Personnel), Singareni Collieries Ltd., Bellampally, Adilabad Disrict.
3 The Chief Security Officer(SNPC) Singareni Collieries Limited, Bellampally Region, Bellampally, Adilabad District.

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